IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

Crl.MC.No. 3639 of 2007()

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CMP.4027/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONER:

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MOHANDAS, S/O.VASU, AGED 42,
KIZHAKKEVELIYIL HOUSE, CHERTHALA SOUTH P.O.

BY ADV. SRI.S.SREEKUMAR
SRI.P.MARTIN JOSE

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. ASSISTANT EXCISE COMMISSIONER,
EXCISE RANGE, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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Crl.M.C.No.3639 of 2007

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Dated this the 14th day of December 2007

**O R D E R**

The petitioner has come to this court with this petition under Section 482 Cr.P.C complaining about the rejection of his claim under Section 451 Cr.P.C to release the vehicle which had been seized by the police for its alleged involvement in an abkari offence. The learned Magistrate had dismissed the application on the short ground that proceedings under Section 67B of the Kerala Abkari Act have already been initiated. The learned counsel for the petitioner contested that statement in the impugned order and therefore the learned Public Prosecutor was directed to take instructions. Today when the matter came up, the learned Public Prosecutor submits that till this date no notice under Section 67B of the Kerala Abkari Act has been served on the petitioner. I am, in these circumstances, satisfied that following the rationale in the decision in Sunderbhai Ambalal Desai v. State of Gujarat [SC 2003(2) KLT 1089] the vehicle should not be permitted to be exposed to sun and rain and consequent damage and deterioration. Subject to appropriate conditions, I am satisfied that vehicle can be directed to be released to the petitioner under Section 451 Cr.P.C.

2. In the result, this petition is allowed. Tourist Taxi (Ambassador Car) bearing Reg.No.KL-7 D1485 shall be released to the petitioner on the following terms and conditions:

i) He shall produce all records before the learned Magistrate to show that he is the person entitled to the possession of the vehicle.

ii) He shall execute a bond with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate for an amount equal to the value of the vehicle to be ascertained and fixed by the learned Magistrate.

iii) In such bond, the petitioner shall undertake to keep the vehicle in the same condition in which it is handed over to him by the court and also to produce such vehicle before the court or any other authority including the authority under Section 67B of the Kerala Abkari Act as and when directed by the learned Magistrate to do the same.

3. If the petitioner executes a bond, the learned Magistrate shall issue release order and thereupon the vehicle shall be released to the petitioner in whosesoever the possession it may be.

**(R.BASANT, JUDGE)**

jsr // True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007